

CENTRAL NEVADA CORPORATION

IBLA 75-416

Decided August 14, 1975

Appeal from a decision of the Nevada State Office, Bureau of Land Management (BLM), rejecting appellant's application for a noncompetitive geothermal resources lease (N 10901) in its entirety.

Affirmed.

1. Geothermal Leases: Applications: Generally -- Geothermal Leases: First Qualified Applicant -- Geothermal Leases: Noncompetitive Leases

Where a noncompetitive geothermal resources lease application indicates that the applicant is not the sole party in interest and [the application] is not accompanied by the information required by 43 CFR 3202.2-5 with respect to the nature of the agreement between the parties in interest and their qualifications, the offer must be rejected even if the applicant is, in fact, contrary to the information disclosed on the lease application, the sole party in interest, where such fact is unknown to the BLM.

2. Geothermal Leases: Applications: Generally -- Geothermal Leases: First Qualified Applicant -- Geothermal Leases: Noncompetitive Leases

An application for a noncompetitive lease of geothermal resources in the name of a corporation is properly rejected where it is not accompanied by a statement as to corporate qualifications or a reference by serial number to a record in which such statement previously had been filed.

APPEARANCES: McDonald, Carano, Wilson, Bergin & Bible, by Robert L. McDonald, Esq., and John Frankovich, Esq., Reno, Nevada, attorneys for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

The appellant, Central Nevada Corp., by its President, Hugh M. McLaughlin, filed a noncompetitive geothermal lease application (designated N 10901) in the Nevada State Office, Bureau of Land Management (BLM), on November 29, 1974. Item 6 of the application consists of a question, "Are you the sole party in interest?", followed by empty boxes marked "Yes" and "No" for the applicant to fill in. Appellant placed an "X" in the box marked "No" in response to the question.

Appellant's application was rejected in its entirety by decision of the BLM State Office dated February 26, 1975, because the applicant failed to disclose the other parties in interest and to provide statements signed by them setting forth the nature of their agreement and evidence of each party's qualifications to hold geothermal leases as required by regulation 43 CFR 3202.2-5. In addition, the decision noted the applicant failed to provide adequate evidence of its corporate qualifications and that future applications should include information required by 43 CFR 3202.2-1. Such additional information would include evidence of Central Nevada's authority to hold geothermal leases, a list of corporate agents or officers authorized to execute lease applications, and disclosure of the names of all stockholders, if any, owning more than a 10 percent interest in the corporation, together with a signed disclosure statement regarding citizenship and holdings for any such owners.

The grounds for appeal raised by the appellant's attorneys are, in effect: (1) that the appellant is in fact the sole party in interest in the lease application (the indication to the contrary on the application form being the result of confusion on the part of Hugh McLaughlin, President of the Corporation, at the time the application was filled out); (2) that a supplemental statement of qualifications will be filed correcting the insufficiencies noted in the decision of the BLM; and (3) that both of the aforementioned defects in the application are curable, and an amendment of the application to supply the necessary curative matter should be allowed.

We note the only subsequent statement regarding sole party in interest is that made by counsel for the appellant in the statement of reasons for appeal and there is no evidence that any supplemental statement of the qualifications of applicant has been filed.

[1] Even assuming arguendo that counsel's statement could suffice as the required statement that the corporation is the sole party in interest, we must uphold the rejection of the application. The first issue raised by the appellant is whether a statement that the applicant is not the sole party in interest in the lease application, coupled with a lack of the information required by 43 CFR 3202.2-5, requires rejection of the lease application even where the statement was erroneous and the applicant was in fact the sole party in interest. In those situations where the applicant is not the sole party in interest, the regulations clearly specify that separate statements signed by each of the parties, including the applicant, must be submitted showing "the nature of the agreement between them." The same regulation also makes it clear that each of the interested parties must furnish evidence of their qualifications to hold a lease interest. 43 CFR 3202.2-5.

Appellant's application clearly indicated that appellant was not the sole party in interest. However, no disclosure was made as to the identity of any other parties in interest, the nature of the agreement between them and the applicant, and the qualifications of any such interested parties. Therefore, the BLM acted properly in rejecting appellant's application. An application which on its face does not meet the requirements of regulation 43 CFR 3202.2-5 must be rejected. California Geothermal, Inc., 19 IBLA 268, 272 (1975).

A correction or amendment indicating that applicant misstated the facts and, in actual fact, was the sole party in interest, was not filed with BLM during the monthly period for filing the application as set forth in 43 CFR 3210.2-2. Because appellant's application is defective in other respects, we need not decide in this case whether the filing of a proper supplemental statement correcting the misstatement regarding sole party in interest after the monthly filing period, but prior to a final adjudication of the application on appeal, could be considered as an amendment of the application which cures the defect under 43 CFR 3202.2-5 at the time it was filed. Cf., Edward B. Towne, 21 IBLA 304 (1975).

[2] The regulations state that applications filed by a corporation must be accompanied by: (1) evidence of authority of the corporation to hold geothermal leases; (2) a statement that the officer executing the application is authorized to act on behalf of the corporation; (3) disclosure of the state of incorporation and the names of any stockholders owning more than a 10 percent interest in the corporation; and (4) a statement from any such stockholders setting forth their citizenship and holdings. 43 CFR 3202.2-1(b). The failure of the applicant to provide the above information was specifically recited in the decision below.

An application for a noncompetitive lease of geothermal resources in the name of a corporation is properly rejected where it is not accompanied by a statement as to corporate qualifications or a reference by serial number to a record in which such statement previously had been filed. E & H Investments, Inc., 19 IBLA 141, 142 (1975). Thus appellant's application was subject to rejection for this reason.

It is also unnecessary to decide appellant's contention that the failure to provide this evidence of qualifications is a curable defect which may be corrected on appeal by a subsequent filing of the information because no additional evidence of qualifications has been filed. To the extent appellant's contention may be viewed as a request for additional time to comply with the regulations by amending the application after this appeal has been decided, we deny the request. This decision makes the rejection of the application final. A new application for the lands would have to be filed by the applicant. Cf. Edward B. Towne, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Martin Ritvo
Administrative Judge

